

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BRIDGESTONE SPORTS CO., LTD.,	)	
and BRIDGESTONE GOLF, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C. A. No. 05-132 (JJF)
	)	
ACUSHNET COMPANY,	)	
	)	
Defendant.	)	

ACUSHNET'S REPLY BRIEF IN SUPPORT  
OF ITS MOTION FOR SUMMARY JUDGMENT OF VALIDITY  
OF U.S. PATENT NOS. 4,729,861; 4,936,587; AND 5,080,367

OF COUNSEL:

Alan M. Grimaldi  
Joseph P. Lavelle  
Kenneth W. Donnelly  
HOWREY LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Tel: (202) 783-0800

Dated: May 11, 2007

Richard L. Horwitz (#2246)  
David E. Moore (#3983)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 North Market Street  
P. O. Box 951  
Wilmington, DE 19899-0951  
Tel: (302) 984-6000  
rhorwitz@potteranderson.com  
dmoore@potteranderson.com

*Attorneys for Defendant  
Acushnet Company*

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	ARGUMENT .....	1
	A. “Bridgestone Elects Not to Respond Substantively to Acushnet’s Motion.” .....	1
	B. Bridgestone Has Wasted the Time and Resources of Both The Court and Acushnet.....	2
III.	CONCLUSION.....	3

## TABLE OF AUTHORITIES

### CASES

<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	2
---	---

### RULES

Fed. R. Civ. P. Rule 56(c).....	2
---------------------------------	---

Defendant Acushnet Company (“Acushnet”) files this Reply Brief in Support of Its Motion for Summary Judgment of Validity of U.S. Patent Nos. 4,729,861 (“the ‘861 patent”), 4,936,587 (“the ‘587 patent”), and 5,080,367 (“the ‘367 patent”) (collectively, “the Lynch patents”).

## I. INTRODUCTION

In response to Acushnet’s instant motion for summary judgment, Bridgestone’s response is: “Bridgestone elects not to respond substantively to Acushnet’s motion.” (D.I. 422 at 3). Rather than waste the time and resources of both the Court and Acushnet, Bridgestone should have withdrawn its invalidity defense when Acushnet requested that it do so. Regardless, Bridgestone’s decision “not to respond substantively” supports a summary judgment determination in favor of Acushnet that the Lynch patents are valid.

## II. ARGUMENT

### A. “Bridgestone Elects Not to Respond Substantively to Acushnet’s Motion.”

On February 23, 2007, Acushnet asked Bridgestone to withdraw its defense of invalidity against the Lynch patents for failure to present any specific argument – much less evidence – in support of it. Bridgestone refused. (Ex. 1 – Seal letter to White, Mar. 13, 2007, at 2) (“we do not confirm that we are no longer challenging the validity of these patents”). Bridgestone’s refusal, in combination with its failure to provide any specific contention of invalidity during discovery, required Acushnet to file the instant motion requesting a summary judgment determination that the Lynch patents are valid.

Bridgestone’s “response” (it could not legitimately be deemed an “opposition”) is that “*Bridgestone elects not to respond substantively to Acushnet’s motion.*” (D.I. 422 at 3) (emphasis added). That is all. Despite its refusal to voluntarily dismiss its invalidity defense, Bridgestone fails to raise even a hint of a genuine dispute of material fact with regard to validity. As a result, a summary judgment in favor of Acushnet is appropriate.

*See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (If the non-moving party fails to make a sufficient factual showing as to any element of its case on which it bears the burden of proof at trial, the “plain language of Rule 56(c) mandates the entry of summary judgment.”).

**B. Bridgestone Has Wasted the Time and Resources of Both The Court and Acushnet.**

While “elect[ing] not to respond substantively to Acushnet’s motion,” Bridgestone refers to Acushnet’s infringement contentions related to the Lynch patents as “a significant waste of judicial resources, as well as the resources of both parties.” (D.I. 422 at 2-3). That statement proves shallow, considering that it is Bridgestone that wasted both the Court’s and Acushnet’s time and resources by forcing Acushnet to file a summary judgment motion that Bridgestone apparently never intended to oppose.

Bridgestone did so knowing that Acushnet’s opening and reply briefs were scheduled to be submitted across a period of time in which both parties were substantially engaged in the pretrial exchange; the filing of multiple motions for summary judgment; *Daubert* motions and motions *in limine*; and a hearing before the Special Master on three separate motions. Thus, Bridgestone’s refusal to dismiss its invalidity defense – despite having no intention to defend it at summary judgment – appears to have been designed to distract Acushnet from its many other tasks at hand.

### III. CONCLUSION

For the foregoing reasons, Acushnet respectfully requests that the Court grant its motion.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Alan M. Grimaldi  
Joseph P. Lavelle  
Kenneth W. Donnelly  
Brian S. Seal  
HOWREY LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Tel: (202) 783-0800

Dated: May 11, 2007

795000 / 28946

By: /s/ David E. Moore  
Richard L. Horwitz (#2246)  
David E. Moore (#3983)  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 North Market Street  
P. O. Box 951  
Wilmington, DE 19899-0951  
Tel: (302) 984-6000  
rhorwitz@potteranderson.com  
dmoore@potteranderson.com

*Attorneys for Defendant  
Acushnet Company*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on May 11, 2007, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading:

Jack B. Blumenfeld  
Maryellen Noreika  
Leslie A. Polizoti  
Morris, Nichols, Arsht & Tunnell  
1201 N. Market Street  
Wilmington, DE 19801

I hereby certify that on May 11, 2007, I have Electronically Mailed the documents to the following:

Robert M. Masters  
Paul, Hastings, Janofsky & Walker LLP  
875 15<sup>th</sup> Street, N.W.  
Washington, D.C. 20005  
[RobMasters@paulhastings.com](mailto:RobMasters@paulhastings.com)

/s/ David E. Moore  
Richard L. Horwitz  
David E. Moore  
Potter Anderson & Corroon LLP  
Hercules Plaza – Sixth Floor  
1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
(302) 984-6000  
[rhowitz@potteranderson.com](mailto:rhowitz@potteranderson.com)  
[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)